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October 6, 2003

The Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: Response of 4C Entity, LLC to the *Ex Parte* Submission on Behalf of Philips Electronics North America Corporation ("Philips") in MB Docket 02-230 (Digital Broadcast Copy Protection)

Dear Chairman Powell:

On behalf of the 4C Entity, LLC ("4C"), this letter responds to statements made in the above-referenced filing (and presumably in the meeting to which the filing related). Those statements include a number of points that are inaccurate and others that give a misleading impression concerning 4C and its Compliance Rules for Recording and Playback of Standard Definition Digital Video Content ("Video Compliance Rules"), specifically in relation to the 4C's recent revision of the Video Compliance Rules to require certain 4C-licensed products to detect and respond to CGMS-A copy protection information in analog video signals.

By way of background, 4C and its Founders – IBM Corporation, Intel Corporation, Matsushita Electric Industrial Co., Ltd., and Toshiba Corporation – developed and offer for license content protection technology for several purposes. Of importance in this context is the Content Protection for Recordable Media ("CPRM") as applied to standard definition video content. 4C has been licensing this technology for over 4 years and there are now over 100 licensees of 4C copy protection technologies. CPRM for video recording permits consumers to make copies of audio-visual works where the content owner has authorized a copy to be made but has indicated that the authorized copy should be restricted, either to prohibit further copying or to restrict redistribution of the content in that authorized copy (e.g., over the Internet). As such, the CPRM technology is an enabling technology that allows consumers to make copies of audio-visual works even where license requirements, and possible government mandates, impose restrictions on the use of the authorized copy. The CPRM technology is capable of use with many different types of removable media that consumers might wish to use, including (currently) DVD-R, -RW and RAM media and SD Card, CompactFlash and IBM Microdrive "flash memory" media.¹ 4C has also been in discussions with representatives of Philips concerning the possibility of applying CPRM to the +R and +RW forms of recordable media. As this suggests, 4C is open to applying CPRM technology to virtually any form of removable consumer recordable media and welcomes the opportunity to work with proprietors of any such media formats to make the necessary adaptations so that CPRM will be useful for their media formats.

Because of the advanced state of our on-going discussions with Philips, we were frankly quite surprised to see the statements made in the September 22 Philips filing. With regard to specific points about the CGMS-A situation, we note the following points for the Commission's consideration:

¹ Separate Compliance Rules, very similar to each other, govern the use of CPRM for standard definition video (used currently for the DVD type media) and less than standard definition video (used currently for SD Card media).

- CMGS-A is a mature rights signaling technology embodied in standards in the United States and internationally (including specifically in the following standards – IEC 61880, IEC 61880-2, EIA/CEA-608B, CEA-805A, ETSI EN 300294, EIAJ CPR-1204, EIAJ CPR-1204-1, EIAJ CPR-1204-2, ARIB TR-B15) and is widely used in a number of applications. Specifically, since the very beginning of the Content Scramble System licensing in 1996, DVD Video players have been required to generate CGMS-A information in video signals being sent through analog outputs, and for at least two years, D-VHS recorders and players have been required to detect and respond to CGMS-A information in video signals that arrive at D-VHS recorders' analog inputs and to generate CGMS-A information in video signals being sent through analog outputs when playing back content recorded onto D-VHS tapes. Perhaps most surprisingly, given Philips' comments, CGMS-A is required to be detected and responded to as a matter of record control in DVD+RW/+R recorders and to be generated on analog outputs when DVD+RW/+R content is played back. (These requirements are contained in compliance rules that are downloadable from

www.licensing.philips.com/licensees/conditions/dvdrw/documents848.html)

Prior to instituting its current detection and response requirement, 4C conducted a survey, admittedly informal, of its existing licensees that have produced CPRM licensed standard definition video recorders. The result was that 4C determined that every one of the recorders made by the companies contacted already detects and responds to CGMS-A. Since 4C announced the revision to its compliance rules to incorporate the detection/response requirement, 4C has not heard from even a single existing licensee with respect to this new requirement.

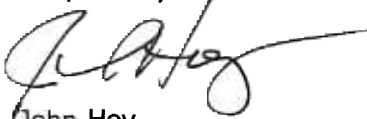
While Philips, as a company that is not now a 4C licensee, was not directly consulted concerning the 4C adoption of this new requirement, Philips was, in fact, aware of the 4C's intentions in this regard for some time before 4C's July 2003 adoption of the CGMS-A requirement. Prior to that, notwithstanding numerous opportunities to raise any concerns about CGMS-A, in meetings between 4C and Philips' representatives and informal discussions between Philips' representatives and 4C Founder representatives, Philips never mentioned any concern about the prospective adoption of CGMS-A detection/response requirements. With regard to the "financial interest" by 4C members that Philips notes, the facts are that Matsushita is one of the holders of patents that read on the CGMS-A technology but that Matsushita has consistently stated that it would not assert those patents against product implementers of the CGMS-A technology. Thus, there is no "financial interest" in requiring that 4C licensed CE-type recorders detect and respond to CGMS-A. This requirement does not impose any new licensing or royalty or other fee obligations on licensees – a fact that Philips well knows from the existence of its own requirement in the +RW/+R context. With regard to 4C's own licensing policies, we also note that 4C's licensing is on a "cost recovery" basis, not at the fee levels for its Founders' normal commercial licensing.

With regard to the fact that the 4C requirement applies solely to CE-type products and explicitly does not apply to computer-based products, the 4C's view is that "parity" across platforms is a very important goal, one that 4C strives to achieve, but that parity is not the only goal in content protection systems. Where a measurable increase in content protection can be achieved through application of an easily deployed, royalty-free protection system in one environment, but where the license simply cannot be used to impose that system in all environments, the parity factor may give way to the benefits achieved by imposing the requirement where it can be done. In this case, 4C weighed the parity concerns against the fact that the detection and response to CGMS-A signals were not burdensome to CE products and were already widely required in other systems and deployed in 4C-licensed CE-type recorders and concluded that the content protection benefits outweighed the lack of parity in this particular instance.

Finally, as the above items suggest, the fact that 4C has now required detection and response to CGMS-A for certain licensed recorders does not amount to 4C having "picked a winner" in the overall analysis of rights signaling systems to address the "analog hole" content protection issue. If the content protection discussions over the past few years have demonstrated anything, it is that incremental changes that allow "good" solutions to be put in place can often accomplish more than long, drawn-out processes that seek to find the "perfect" solutions. In this situation, 4C has simply followed other marketplace developments in fashioning our requirement to implement, today, an approach that can provide meaningful improvement in content protection, while explicitly noting for our licensees that a watermark-based approach may be required to be implemented in the future, either in place of or in addition to CGMS-A. 4C Founders are active participants in the ARDG process, and 4C will evaluate the results of that process, as well as other developments, in deciding whether to implement additional technologies in pursuit of improved content protections. Again, this is precisely what Philips has told its licensees in the +RW/+R context. Moreover, we note that at least two of 4C's Founders have offered, and continue to offer, watermark technology and/or intellectual property for watermark technology in the on-going multi-industry watermark evaluations.

4C would be happy to respond to any questions that the Commission or its staff may have with regard to these or other relevant matters.

Respectfully submitted



John Hoy
Manager, 4C Entity, LLC

cc:

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